



Office of the Attorney General
State of Texas

September 11, 1998

DAN MORALES
ATTORNEY GENERAL

Mr. Kevin W. Kapitan
Assistant City Attorney
City of Fort Worth
350 West Belknap
Fort Worth, Texas 76102

OR98-2171

Dear Mr. Kapitan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 117950.

The City of Fort Worth Police Department (the "department") received a request for information concerning an internal affairs investigation of an incident between the requestor and department officers. In response to the request, you submit to this office for review the information which you assert is responsive. You state that the department will release to requestor some of the information responsive to the request. However, you claim that the police department internal affairs investigation file is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your claim that responsive records, Exhibit B, "in its entirety" must be withheld pursuant to section 552.101 in conjunction with section 143.089 of the Local Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." You represent that the internal investigation file at issue is part of a police personnel file maintained pursuant to section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the city's police department is required to maintain as part of the police officer's civil service file, and one that the city's police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) reads as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department


shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file." Local Gov't Code § 143.089(g). In a case involving a newspaper's request for a police department file, the Third Court of Appeals in Austin determined that subsection (g) expressly forbids the release of files maintained under subsection (g) of section 143.089 to anyone under any circumstances. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

In cases in which a city's police department takes disciplinary action against a police officer, it is required by Local Government Code section 143.089(a)(2) to transfer records relating to the investigation and disciplinary action to the civil service commission. Such records may not be withheld under section 552.101 of the Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. You have represented to this office that "due to the very recent completion of the referenced investigation(s) options pertaining to administrative action are still being evaluated." Further, an internal memorandum which you have submitted indicates that "[a]t this time no administrative or other action has been taken." Assuming that this internal affairs investigation is not part of any police officers' civil service personnel file, we conclude that the department must withhold the internal investigation file from disclosure under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code. However, if the internal investigation results in disciplinary action against a police officer, it is required by section 143.089(a)(2) that the file be transferred to the civil service commission; and, consequently the file will not be subject to withholding under section 143.089(g).

As we resolve this matter under section 552.101 in conjunction with section 143.089, we need not address your other claimed exceptions at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 117950

Enclosures: Submitted documents

cc: Mr. Jack Allen
Constable Tarrant County
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(w/o enclosures)